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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT No. 709 OF 1996

Central Bank of India,)
a body corporate constituted)
under the Banking Companies)
(Acquisition and Transfer of)
Undertakings) Act V of 1970,)
having its Central Office at)
Chandermukhi, Nariman Point,)
Mumbai-400 021 and a Branch)
Office inter alia, known as)
Peddar Road Branch, situate)
at Poornima Apartment, 23,)
Peddar Road, Mumbai 400 026. Plaintiff

Vs.

1. M/s. Sanzgiri Graphics)
a proprietory firm, having)
its office at 307, Dhanraj)
Industrial Estate, A Block)
3rd floor, Sunmill Lane,)
Lower Parel, Mumbai 400 013

2. Shri R.K. Sanzgiri,)
adult, Indian Inhabitant,)
residing at Dnyan Jyoti,)
Block No.8, 1st Floor,)
Shivmandir Compound, Ram)
Nagar, Dombivali (East))
421 201, District Thane)

3. Shri R. M. Kapdi, adult)

Indian Inhabitant, residing
at Block No. 303, Creek)
Side Co-Op. Housing Society
Ltd., Kishanchand Marg,)
Bandra Reclamation, Bandra)
(W), Mumbai 400 050.)

4. Shri Prakash Keshav Chitnis
adult, Indian inhabitant,)
Enpee Apartments, 105/3,)
S.L. Matkar Marg, Elphinston
Road, Mumbai 400 025. Defendants

Mr. R. M. Vasudeo, advocate for plaintiff.
None for the defendants.

CORAM: Smt. RANJANA DESAI, J.
DATE : AUGUST 24, 2007.

ORAL JUDGMENT:

. This suit is kept under caption "undefended suits for exparte decree". The learned counsel for the plaintiffs has tendered in the Court affidavit of Mr. P. Sampath Kumar, Branch Manager, in lieu of examination in Chief. The list of original documents is also tendered in the Court. The affidavit of Mr. P. Sampathkumar is marked

"X" and list along with documents is marked "Y" (Colly.)

2. The plaintiffs' case as evident from the plaint, the affidavit of evidence and documents may be stated. The plaintiffs are a body corporate, constituted under the Banking Companies Act (Acquisition & Transfer of Undertakings) Act V of 1970, doing business of banking. The case of the plaintiffs is that, defendant No.1 is a proprietary concern and defendant No.2 is the sole proprietor of defendant No.1. Defendant No.1 is having its office at 307 Dhanraj Industrial Estate, Lower Parel, Mumbai. Defendant Nos. 3 and 4 have executed letters of guarantees, guaranteeing the repayment of amounts advanced by the plaintiffs to defendant No.1.

3. According to the plaintiffs, on or about 7th May 1990 defendant No.1 requested the plaintiffs to grant Cash Credit (Hypothecation) facility to it. The said application is at Serial No.1 of the compilation of documents. It is marked Exhibi-1. The request of defendant No.1 was

considered by the plaintiffs in or about August 1990 and it was decided that on defendant No.1 executing necessary documents and defendant Nos. 3 and 4 executing necessary letters of guarantees, the said facility should be granted to defendant No.1. Defendant No.1 agreed to pay the interest, charged by the plaintiffs, according to the rates stipulated by the Reserve Bank of India. Defendant Nos. 3 and 4 agreed to stand as guarantors in respect of the advances to be granted by the plaintiffs to the first defendant.

4. In consideration of the plaintiffs granting Cash Credit (Hypothecation) Facility, defendant No.1 executed and delivered to the plaintiffs documents, the particulars whereof are given in paragraph 4 of the plaint. They are as under -

(a) A Demand Promissory Note dated 3-8-1990 for Rs.2,50,000/-(Exh. A).

(b) A letter of continuing security, dated 3-8-1994 (Exh. B).

(c) Agreement of hypothecation of goods, dated 3-8-1990, whereby defendant No.1 hypothecated in favour of the plaintiff all tangible movable property, such as products, stock-in-trade and goods, whether finished or raw or in process of manufacturing and all articles manufactured, therefrom belonging to the borrower, which at the that time or thereafter from time to time during the security would be brought in or stored or be in or about the premises, warehouses or godowns of the defendant No.1, and also raw materials like films, zinc and copper sheets, mat cards, art papers, glue, hypofixers, nitric acid, etc.(Exh. C).

Originals of these documents are tendered in the Court and are before the Court. They are marked as Exh. A, B & C respectively. I have perused those documents.

5. A letter of hypothecation dated 3-8-1990, hypothecating machinery, as more

particularly spelt out in the Schedule; so also letter dated 3-8-1990 whereby defendant Nos. 1 and 2 declared that defendant No.2 is the sole proprietor of defendant No.1, and letters of guarantees executed by defendant Nos. 3 and 4, both dated 3-8-1990 guaranteeing the repayment of the loan advanced to defendant No.1, are also on record. They are at Exhibits D, E and F and G respectively. I have perused the said documents.

6. According to the plaintiffs, the plaintiffs had advanced diverse amounts under the said Cash Credit (Hypothecation) Facility and maintained the account of defendant No.1 in its books of accounts, in the ordinary and usual course of business.

7. Defendant No.1 on or about 13-7-1993 confirmed by letter dated 13-7-1993 that a sum of Rs.2,62,700.41 Ps. is due and payable by defendant No.1 to the plaintiff bank. Original of said letter dated 13-7-1993 is at Exh. H. Defendant No.1 again on 12-10-1993 confirmed that a sum of Rs. 2,64,397.91 Ps.

is due and payable by defendant No.1 to the plaintiff bank. Copy of balance confirmation letter dated 12-10-1993 is on record at Exh. I.

8. According to the plaintiffs, on 4-1-1994 the defendants renewed the following documents-

. (a) A Demand Promissory Note dated 4-1-1994 for Rs.2,00,000/-(Exh. J).

(b) A letter of continuing security, dated 4-1-1994 (Exh. K).

(c) Agreement of hypothecation of goods, dated 4-1-1994, whereby defendant No.1 hypothecated in favour of the plaintiffs all tangible movable property, such as products, stock-in-trade and goods, whether finished or raw or in process of manufacturing and all articles manufactured, which at the that time or thereafter from time to time during the security would be brought in, stored or be in or about

the premises, warehouses or godowns of the defendants, and also copper sheets, zinc mat cards, film packets, itching powder ink, acid, kerosene paper at Defendant No.1's place at 307, Dhanraj Industrial Estate, A Block, Sunmill Lane, Lower Parel, Mumbai 400 013 (Exh. L).

(d) Letter of hypothecation dated 4-1-1994 hypothecating the machinery (Exh. M)

The demand promissory note dated 4-1-1994, letter of continuing guarantee dated 4-1-1994, agreement of hypothecation dated 4-1-1994 and letter of hypothecation dated 4-9-1994 are on record at Exhs. J, K, L and M respectively.

9. It is the case of plaintiffs that since defendant No.1's account was out of order, the plaintiffs by their various letters informed defendant No. 1, that their account had become irregular and called upon defendant No.1 to regularize the same.

10. Since defendant No.1 failed and neglected to adjust the account, the plaintiffs vide their Advocate's letter dated 23rd January 1996 called upon the defendants to pay the entire dues. Defendant No.1 by its letter dated 1-2-1996 replied to the said notice. Defendant No.1 asked for further time to settle the dues and stated that the balance of Rs.4,76,264.41 is wrongly calculated. Notice dated 23-1-1996 and reply of defendant No.1 dated 1-2-1996 are on record. They are marked as Exhs. 1 and 2 respectively. I have perused them.

11. In the circumstances, it is the case of the plaintiffs that the plaintiffs granted to the first defendant the Cash Credit Facility and advanced diverse amounts thereunder. In respect of the said facility an amount of Rs.4,87,603.41 Ps., as per the particulars of claim, annexed to the plaint at Exh. "O" with further interest at the rate of 19.75% per annum is due and payable by the first defendant to the plaintiffs and the defendants are bound and liable to pay to the plaintiffs the said dues.

12. According to the plaintiffs, the repayment of the aforesaid dues mentioned in Exh. O is secured by hypothecation of goods and machinery, which are more particularly described in Exh.C, D and L, M to the plaint. The plaintiffs' case is that the plaintiffs are entitled to enforce the security to realize the dues. Admittedly on 1-7-1996 this Court has appointed a receiver in respect of the hypothecated goods, movables and machinery, more particularly described in Exh. C, D & L, M. Admittedly the said order was confirmed by this Court. Pursuant to said order, the said goods, movables and machinery are in possession of the Court receiver. The possession was taken by the Court receiver on 26-11-1996.

13. The plaintiffs contend that defendant No.2 being the Sole Proprietor of defendant No.1, is liable to pay the outstanding claim to the plaintiffs. The guarantees executed by defendant Nos. 3 and 4 are continuing guarantees, and therefore, defendant Nos. 1, 2, 3 and 4 are jointly and severally liable to

pay the outstanding amount which they have failed and neglected to pay. The plaintiffs have therefore, prayed for a decree, directing the defendants to pay jointly and severally to the plaintiffs a sum of Rs. 4,87,603.41 Ps. with further interest at the rate of 19.75 per cent till decree, and thereafter at the same rate till the payment and realization, with quarterly rests. The plaintiffs have also prayed that the goods and machinery in possession of the receiver be ordered to be sold through the receiver, and the net sale proceeds thereof be applied in or towards satisfaction of the plaintiffs' claim.

14. The defendants have not contested the suit. Mr. Sampath Kumar, Branch Manager of the plaintiffs who is present in the Court has confirmed the contents of the plaint, the affidavit in lieu of examination in chief and the documents on which the plaintiffs have placed reliance. He has proved the said documents. Having perused the plaint, the documents, the affidavit of evidence of Mr. Sampath Kumar, Branch Manager, of the plaintiffs, I am of the opinion that the

plaintiffs are entitled to a decree in terms of prayer Clause (a) and (b) of the plaint. Hence, the suit is decreed in terms of prayer Clause (a) and (b). The plaintiffs are also entitled to interest at the rate of 19.75% per annum on its claim till the date of decree, and thereafter till realization, at the rate of 18% per annum.

15. Appointment of Court Receiver is continued for a period of six months. Needless to say that the plaintiffs will be at liberty to make appropriate application in execution inter alia for sale of the hypothecated goods and for application of the sale proceeds towards the satisfaction of the plaintiff's claim

16. Suit is disposed of.

Sd/-
[**Smt. RANJANA DESAI, J.]**